



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable D. W. Burkhalter  
County Attorney  
Throckmorton County  
Box 953  
Throckmorton, Texas

Dear Sir:

Opinion No. 0-6667  
Re: Compensation of the  
Sheriff under the facts  
stated.

Your letter of June 14, 1945, requesting the opinion of this department on the question stated therein, is as follows:

"The last clause of Art. 3933 entitled Sheriff provides:

"For every day the sheriff or his deputy shall attend the district or county court, he shall receive four dollars a day to be paid by the county for each day that the sheriff by himself or a deputy shall attend court."

"Under the above Article is the Sheriff entitled to the Four Dollars each day in probate matters.

"Or in other words, an application is presented to the county judge to be appointed temporary administrator of a decedent's estate, and the application is granted, and an order issued appointing the applicant temporary administrator, and ordering the Clerk to issue and cause to be posted notice as required by law, and the Clerk issues the notice and the Sheriff posts it, would the Sheriff be allowed Four Dollars to be

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paid by the county besides the \$1.00 fee allowed for the posting of the notice, or is he just entitled to the \$1.00 for the posting of the notice?

"Does the above Sec. apply to proceedings in the Probate Court, or just to proceedings in the county court?"

Throckmorton County has a population of 4,275 inhabitants according to the 1940 Federal Census and the county officials of said county are compensated on a fee basis. Therefore, Article 3933, Vernon's Annotated Civil Statutes, is applicable regarding the compensation of the sheriff of Throckmorton County.

This department has repeatedly ruled that a sheriff who is compensated on a fee basis is entitled to pay for attendance upon the court under Article 3933, only when the court is in actual session and not while merely constructively in session.

We quote from an opinion of this department, dated September 26, 1937, addressed to Honorable Ben J. Dean, as follows:

"In an opinion heretofore rendered by this department on February 21, 1937, which was ruled that the sheriff was entitled to the fees mentioned . . . only when the court was actually in session. The opinion construes the phrase 'actually in session' to mean the presence of the judge, and it also points out the fact the judge must assume the bench and proceed with the business of the court. This opinion has been followed by this department on numerous occasions."

We quote from opinion No. 0-966 of this department, dated June 13, 1939, as follows:

"You are respectfully advised that it is the opinion of this department that the sheriff of Walker County is entitled to \$4.00 each day he is actually in attendance upon the court since the statute specifies that this sum is

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to be paid for each day that the sheriff or his deputy shall attend said court. No per diem should be allowed where there is no such attendance even though the court may be in session and is performing its various duties where the court is required to perform many functions where the attendance of the sheriff or his deputy is not necessary. It must be borne in mind that statutes permitting compensation to public officials must be strictly construed and it is a settled policy of the courts not to permit the payment of fees or other forms of compensation, unless the statutes specifically and clearly authorize the same."

The sheriff is entitled to a \$1.00 fee for the posting of the notice under Article 3933.

You are respectfully advised that it is the opinion of this department that the sheriff of Throckmorton County is entitled to \$4.00 per day for each day he is actually in attendance upon the court, as the statute specifies that this sum is to be paid for each day that the sheriff or his deputy shall attend the district or county court. Stated differently, the sheriff is entitled to \$4.00 for each day he is actually in attendance upon the court. He would not be entitled to such compensation where he is not in attendance even though the court may be in session and is performing its various duties where the court is required to perform many functions where the attendance of the sheriff or his deputy is not necessary. The sheriff would not be entitled to \$4.00 for each day that the administration is pending or the court is in session, but would be entitled only to \$4.00 for each day in actual attendance upon the court as stated in the opinions, portions of which are quoted above.

Yours very truly,

Approved Jun 21, 1945  
/s/ Carlos C. Ashley  
First Assistant  
Attorney General

ATTORNEY GENERAL OF TEXAS

By /s/  
Ardell Williams  
Assistant

AW:LJ:ddt

Approved Opinion Committee  
By B. W. B. Chairman